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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/042,615	01/08/2002	Philippe Monblanc	040006-000000US	6161

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EXAMINER

ALEXANDER, LYLE

ART UNIT	PAPER NUMBER
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1743

DATE MAILED: 02/16/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

10/042,615

Applicant(s)

MONBLANC ET AL.

Examiner

Lyle A Alexander

Art Unit

1743

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 23 November 2004.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-14 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-14 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |   |   |
|---|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)  | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date <u>11/24/04</u> . | 6) <input type="checkbox"/> Other: _____  |

***Claim Rejections - 35 USC § 112***

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claim 4 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 4 is vague and indefinite what structure "two tabs" intend. The original specification references "tabs" once on page 3 in the third full indention/paragraph. The specification fails to give any example or description that would indicate the regions(13), as proffered by Applicants' in their 11/23/04 remarks, would have been "tabs". In the absence of teaching this structure, the Office maintains the 35 USC 112 second paragraph rejection is proper.

***Claim Rejections - 35 USC § 102***

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Claims 1-5,6-8 and 10 are rejected under 35 U.S.C. 102(b) as being clearly anticipated by Borkenstein (USP 4,080,170).

Borkenstein teaches a test device and kit for the collection of breath alcohol samples. Cartridge(10) includes tube(12) that has opening(13) and outlet(14). Disk(16) is placed over the outlet(14). A portion of filter paper(18) is placed against the disk(16) and retains calcium sulfate particles(19) at one end of the cartridge(10). Another portion of filter paper(20) is positioned at the other end of the calcium

Art Unit: 1743

sulfate(19) so that the calcium sulfate is immobilized between the two portions of filter paper(18,20). Paper(20) is held in the cartridge(10) by spring clip(21).

***Claim Rejections - 35 USC § 103***

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Claims 6, 9 and 11-14 are rejected under 35 U.S.C. 103(a) as being unpatentable over Borkenstein in view of Paul (USP 4,740,475).

See Borkenstein supra.

Borkenstein is silent to the tube being made of glass and providing covers for the ends of the tubes and creating a test kit having plugs at either end.

Paul teaches a kit for the determination of an analyte. Figure 1 teaches a breath alcohol-testing unit(10) containing granular potassium dichromate reagents(13). Porous retainer means(14) are positioned within the testing unit and contain the reagents. Paul teaches the tube containing the reagent can be made of glass and the device is placed in a covered container.

It is well known that glass is an advantageous material of construction because it is inexpensive, easily shaped, inert and lightweight. Further, it is advantageous to have a cover to close the ends of a device to prevent contaminants from interfering with the reagents.

It would have been within the skill of the art to modify Borkenstein in view of Paul and construct the tube from glass and to provide caps to gain the above advantages.

Art Unit: 1743

Further, Paul teaches in column 2 lines 16+ that Paul is an improvement over Borkenstein. It would have been advantageous to use the glass tube taught by Paul because it is simpler design and would minimize manufacturing cost. Further, if the tube of Paul were employed, then two of the structures taught by Borkenstein would be required (e.g. one at each end).

It would have been within the skill of the art to further modify Borkenstein in view of Paul and use the taught cartridge(10) in each end to gain the above manufacturing advantages.

### ***Response to Arguments***

Applicant's arguments filed 11/23/04 have been fully considered but they are not persuasive.

Applicants' traverse the 35 USC 112 second paragraph rejection. Applicants' states an example of the claimed tabs are elements(13) illustrated in figure 1. As noted above, the specification does not describe element(13) as a tab. The Office best understands the term "tab" as being a member that can be readily grasped. Element(13) does not appear to have a region that could be readily grasped. The Office maintains the rejection is proper as there is no description of the claimed "tab" structures.

Applicants state Borkenstein fails to teach the claimed coupling of the disk to the filter. The Office has read the claimed "coupled" as linking two elements together or connecting the elements. The Office maintains the filter of Borkenstein is placed into

Art Unit: 1743

physical contact and held in contact with the disk and has been properly read on the claims.

Applicants state Borkenstein does not teach an elastically deformable part of the filter. The instant claims are not directed to any specific "elastically deformable" structure. Borkenstein teaches cartridge(10) is fitted into a tube(11). The Office maintains cartridge(10) meets the claimed "elastically deformable" limitation when it is placed into tube(11).

Applicants state the clip taught by Borkenstein does not press an elastically deformable part of the filter against the wall of the tube. The clip(21) is used to keep the cartridge(10) from moving and thus must be pressing a portion of the filter against the wall and meets the instant claims.

Applicants' have argued the merits of claims 13 and 14. The Office believes these issues have been addressed above in the 35 USC 103 rejections.

**THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of

Art Unit: 1743

the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Lyle A Alexander whose telephone number is 571-272-1254. The examiner can normally be reached on Monday, Wednesday and Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jill Warden can be reached on 571-272-1267. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Lyle A Alexander  
Primary Examiner  
Art Unit 1743

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